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| Description | County Planning Board October 13, 2009 | | |
| Date | 10/13/2009 | Location | County Planning Board |
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| Time | Speaker | Note | |
| 6:00:08 PM | President Kerry White | Call to Order. Members Present: Kerry White, Marianne Jackson Amsden, C.B. Dormire, Don Seifert, Mike McKenna, Doug Espelien, Julien Morice, and Susan Riggs. Members Absent and Unexcused: Pat Davis and Byron Anderson. Staff Present: County Planners Sean O'Callaghan, Warren Vaughan, Tom Rogers and Recording Secretary Glenda Howze | |
| 6:00:15 PM | President Kerry White | Public Comment. | |
| 6:00:35 PM | | There was no public comment on matters not on the agenda. | |
| 6:00:39 PM | President Kerry White | Approval of September 22, 2009 Minutes. | |
| 6:01:01 PM | | The minutes stand approved as presented. | |
| 6:01:04 PM | President Kerry White | Planning Department Update. | |
| 6:01:16 PM | Sean O'Callaghan, County Planner | Noted the distribution of the Gallatin Gateway Community Plan document. The updated version of the subdivision regulations will be forthcoming, hopefully at the next meeting. | |
| 6:02:12 PM | | Discussion regarding the zoning portion of the Gallatin Gateway Plan. The zoning portion has not been started yet. The idea was to finish Four Corners first, request volunteers to serve on the committee that will work on the zoning aspect, and then hopefully have it completed approximately six months from the time the committee starts work. | |
| 6:03:19 PM | President Kerry White | Regular Agenda | |
| 6:03:23 PM | | Public Hearing and Decision on a Resolution Recommending to the County Commission that the Commission Adopt the North Gallatin Canyon Zoning Regulation and Zoning District Map. | |
| 6:03:40 PM | Warren Vaughan, County Planner | Presentation and explanation of reason that the Planning Board is hearing this item again. | |

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| 6:09:13 PM | | Questions and discussion with staff regarding this proposal including the previous testimony and demonstration of support or opposition by affected landowners. |
| 6:12:28 PM | C.B. Dormire | Thanked Warren for the preparation of the memo regarding this item; noted that it was very helpful. |
| 6:12:39 PM | | Continued discussion regarding various areas in the staff report and regulation document including the role of a Board of Adjustment (2-6, 2.4.2.E.); accessory structures and decks language (3-1, B) [language in question will be taken out]; height restrictions and agricultural structures (3-1, 3.4.1); regulation of wind driven electrical generating facilities; the ability to single-use zone; and the amortization clause. |
| 6:24:59 PM | President Kerry White | Inquired about the request of the County Attorney's Office for a legal opinion on MCA 76-2-208 that was made of Jecyn at the last hearing on this matter. |
| 6:25:47 PM | Warren Vaughan, County Planner | Commissioner Skinner asked this question of the County Attorney's Office and he received a response to his inquiry in the form of an informal memo from Jecyn. The Attorney's Office has gone through the issues brought forward by the sign company and has said that they don't agree with the conclusions that the sign company has made. The Attorney's office has said that given the host of decades of case law throughout the nation, that signage has always been treated differently than houses or buildings. The question is not can you do it but how long. How long does the amortization period have to be? That is why they are coming back saying that the longer the amortization period the longer the company has to make a reasonable return on their investment. |
| 6:27:34 PM | | Discussion regarding where this determination has been tested (other states, possibly not Montana) and whether it applies in this case. The lease of the land in this case is 30 years. |
| 6:28:38 PM | Warren Vaughan, County Planner | The zoning statutes that we have in the State of Montana, everyone has the same zoning statutes, or they did. In the 1920's the Commerce Department issued the standard Planning Enabling Act and the Zoning Enabling Act and every state in the nation adopted it at some point. Most states have gone through in the last fifty or so years and updated it from those original statutes and in many cases have made things more flexible. About half of the states have done this and other half are still using the original standards that get tweaked ever so often. I don't know if that set of statutes are in there but most likely something close to it exists. |
| 6:29:24 PM | President Kerry White | Before the Board tonight we don't have stuff from other States to tell us that counties and cities prevailed based on 76-2-208 which is |

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| | | <p>in their zoning regulations. We don't know what those other cases revolved around and Kalispell doesn't apply because they used a different standard when they brought it to court. I made this argument for 76-2-208 and I have yet to get an answer. It doesn't sound like the Commission has gotten a statement or a memo from the County Attorney's Office on my request for clarification on this section of statute. [Commissioner Skinner received a response from Jecyn on his questions but it wasn't a document to the Commission as a whole.]</p> |
| 6:31:01 PM | Julien Morice | <p>I know that Four Corners met, worked with the various interests, made compromises and then moved forward with a comprehensive document that had been gone through word for word by everyone involved. Everyone had a say and that allowed me to say 'okay I'm comfortable with this because it is exactly what everyone wants'. Do you see this document differently? It came very quickly. Does everyone know what they are getting in to and do you see a lot of different people from different walks of life with different invested interests coming forward with absolute support of this? Are there landowners that have a strip of land right along the highway that are giving up their option of generating revenue that are in support as well? Has this document been gone through in detail?</p> |
| 6:32:38 PM | Warren Vaughan, County Planner | <p>Everybody received a copy of the standards in mail. There were three community events where the document was gone over line by line. There was discussion about all the different points of that. It didn't take as long as Four Corners but that is a completely different case and a lot more comprehensive. The message that I've been getting from the landowners consistently is that we want to have something that protects us from inappropriate signage in the Canyon and we don't want to go too overboard with it. That has been the general message from the beginning. There are some down there that want a little bit more and some people down there that worry that this is a slippery slope into bigger things that they don't want. From what I've seen everyone that has been involved has been united in wanting to preserve the scenic resources of the Canyon by adopting this thing.</p> |
| 6:34:14 PM | President Kerry White | <p>Inquired about the public notice requirement.</p> |
| 6:34:24 PM | Warren Vaughan, County Planner | <p>The notice requirements are two-fold. You have to post it five places throughout the district for 45 days in advance of the hearing in front of the Commission. It has to be noticed in the newspaper twice between 45 and 15 days in advance of the hearing. The mailing to the property owners was above and beyond the notice requirements.</p> |

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| 6:34:57 PM | President Kerry White | The document that we have in front of us today, do you feel that is a substantial change from what the property owners were noticed and voted on in the first place? Is this something that the board should look at and determine whether the landowners really understand the implications of 3 years versus 10 years before the sign is gone? |
| 6:35:29 PM | Warren Vaughan, County Planner | In my opinion, as soon as the hearing happened on the 16th and the regulation was denied, they immediately put a letter in the mail explaining what happened and that it was going to be changed from 3 years to 10 years. |
| 6:36:27 PM | Susan Achinapura | Presentation and also entered a letter into the record. |
| 6:43:01 PM | Doug Espelien | Asked for more details on the two landowners that expressed opposition to the regulation. |
| 6:43:29 PM | Susan Achinapura | The two no votes of the total 83 that we received came through via the ballots. One vote was a no with no explanation, the other was someone who owns an acre and is against any kind of regulation. |
| 6:44:38 PM | Doug Espelien | You stress the urgency of this. Is the reason for the urgency to get the zoning in place before other structures or billboards are installed? |
| 6:45:23 PM | Susan Achinapura | The urgency is to prevent the Montana Department of Transportation from issuing any more permits. They are legally bound to issue permits that comply with their guidelines and without zoning that forbids outdoor advertising signs they must approve the permit applications. |
| 6:45:54 PM | Doug Espelien | Has the landowner with the sign on their property indicated how they feel about the zoning? |
| 6:46:13 PM | Susan Achinapura | That [landowner] is Tom and Judy Tyler. They haven't attended any of the public meetings or the landowner meetings that we held at the Gallatin Gateway Community Center. We tried very hard to get their input. I don't know how they feel about the zoning. My conversations with them have left me with the impression that they are afraid of being sued by the sign company if they do anything actively against the sign. That is my impression only. They have faced many difficult situations since the sign was installed. |
| 6:47:49 PM | Julien Morice | Are there any sign applications at the State level right now. |
| 6:48:00 PM | Susan Achinapura | I haven't heard recently that there are any and I haven't called MDT to ask them recently either. |
| 6:48:26 PM | C.B. Dormire | Wind driven electrical generating facilities - is this a piece that folks are interested in having in there or is that a piece that just survived the drafting efforts? |

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| 6:49:18 PM | Susan Achinapura | You are correct in saying that it was a piece of boiler plate [language] that made its way in to the document. We didn't consider it being a power company owning acreage and putting up wind turbines. We were considering it as an agricultural addition and someone could put up a windmill on their stand alone piece of property. If it turned into a ugly thing, I personally don't think any of the landowners are interested in a wind farm popping up in the Canyon, so perhaps we should adjust that. |
| 6:51:04 PM | Public Comment | Public comment by Susan Hellier and David Steinmuller spoke in support of the proposed regulation. |
| 6:55:41 PM | | Discussion regarding Saunders Company and the change to a 10 year amortization period. Saunders has not offered comment on the change but it is Warren's understanding that they aren't going to be happy with any amortization period at all. |
| 6:57:30 PM | | Public comment closed. |
| 6:57:31 PM | | Board discussion. |
| 6:57:37 PM | Mike McKenna | I want to make sure that I'm clear on the amortization period. Do I understand that the County Attorney's Office has looked over the 10 year amortization period and deems that is an acceptable period under the law? |
| 6:58:04 PM | Warren Vaughan | The Attorney's office has said that in general that amortization clauses are legally defensible but that the question is the length of time and their opinion is that the longer they are the more defensible they are. They are fairly comfortable with the ten years. |
| 6:58:25 PM | Mike McKenna | I also want to make sure that I'm understanding what I'm reading here in this letter that Susan wrote to the rest of those in the zoning district. She basically said that Commissioner White voted no because he believes that the Montana law grandfather's those structures indefinitely. [Commissioner White had the same issues that President White has regarding 76-2-208. He has always maintained this position and the County Attorney's Office has always maintained theirs.] |
| 6:59:30 PM | Don Seifert | Asked when the amortization period would start. |
| 6:59:43 PM | Warren Vaughan, County Planner | Upon adoption of the zoning. |
| 6:59:50 PM | Doug Espelien | Have you had any correspondence or communication with Saunders? |
| 7:00:00 PM | Susan Achinapura | I personally spoke with Mr. Saunders a year ago in July. I asked him how much money it would take for him to take the sign down. |

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| | | Mr. Saunders was difficult and refused to give me a dollar amount. |
| 7:00:52 PM | | Board discussion. |
| 7:00:55 PM | Marianne Jackson Amsden | I wanted to respond to a comment that Julien made regarding the importance of protecting property rights. I think that is a good argument but it is also my opinion that the quest for the almighty dollar doesn't rise above the mandate to uphold public health and safety. I think that is the number one reason to go ahead with this. I do think that a billboard in that location of that dangerous stretch of highway could pose a serious health and safety hazard. Having said that I would like to move that this board recommend adoption of the North Gallatin Canyon Zoning Regulation, District, Boundaries and Map to the Gallatin County Commission. |
| 7:01:57 PM | Susan Riggs | Second. |
| 7:02:12 PM | | Board discussion. |
| 7:02:42 PM | C.B. Dormire | Noted on an administrative matter that he'd like to express his angst with the inability of the Planning Board to engage a response to the Planning Board from the County Attorney's office. I hope that somehow the message can be conveyed [to the Attorney's Office] that this is not the best way for us to have to proceed. I'm sure that Warren has accurately relayed everything but he ought not to be in the position of having to and we ought not have to be in the position of having to rely on someone in Warren's position accurately relaying the views of the County Attorney's Office. I think we should be entitled to get such views. |
| 7:03:54 PM | Mike McKenna | It is interesting that we all voted unanimously last time to pass this zoning regulation and now we have a legal question that causes us the same concern that Commissioners Skinner and White had. This puts us in an awkward position to have to make a motion, which we don't have to tonight. If we want to consult the County Attorney's Office or outside counsel we have every right to do so. What I believe the County Commission wants us to do is to bring them good, solid, defensible motions. If we feel that we have a good, solid, defensible situation here then we vote for it. I do think that the amortization period is legal then I think I can support this motion. In addition to that I think the almighty dollar isn't the most important thing either but I think that there are a lot of structures in a lot of areas that cause distraction and this isn't the worst thing in the world but it is too bad that it is there. The almighty discussion can work both ways. Commissioner White has always said that he wants citizen initiated zoning and that is exactly what we have here tonight. I'm going to support the motion because I think it is legal. If it isn't legal then it will be challenged and that will be up to the Commissioners at that point. |

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| 7:06:35 PM | Julien Morice | With regards to the almighty dollar comment and the public health and safety. I think it is a bit of a reach to conclude that that sign is somehow influencing accidents in the canyon. There are so many variables that go into that and a real study hasn't been done. I'm not including that in my decision. I will support this but it is due to the grass roots nature. I do have concerns with anyone's property right and the effects when that is yanked away from them. |
| 7:07:33 PM | Warren Vaughan, County Planner | Offered clarification that the County Attorney's Office hasn't issued a formal statement but have formally approved the document as a whole and they are standing behind that approval. |
| 7:08:04 PM | Mike McKenna | Don't we all think it is odd that if Commissioner White is taking a particular stance saying that he thinks that the document is illegal because of the grandfather clause that that particular point hasn't been addressed by the County Attorney's Office. That is why he voted against it, I'm sure. |
| 7:08:27 PM | Warren Vaughan, County Planner | Commissioner Skinner did ask the Attorney's Office for a response to those things and he did get it. Their response did address the questions posed to them and they did respond to him. They believe that they can successfully defend the amortization clause. |
| 7:09:10 PM | Susan Riggs | I'd like to add a finding that this zoning regulation also promotes the adopted Growth Policy in relation to scenic values, just to add something beyond the public health and safety. |
| 7:09:28 PM | C.B. Dormire | I'm going to support on the assumption that the grandfathering provision is lawful. |
| 7:10:28 PM | Marianne Jackson Amsden | Added findings: I find that the public testimony today was in favor of the adoption of this and also that the proposed North Gallatin Canyon Zoning Regulation meets the procedural requirements of Montana Code Annotated 76-2-201 as laid out on page 5 of the staff report. The zoning regulations must be in accordance with the list on page five and as I read the regulation I did determine that it did meet these regulations with the exception of "D" which seemed non-applicable. |
| 7:11:28 PM | Doug Espelien | I'm going to oppose this until we get clarification from the County Attorney's office rather than approve it contingent on the County Attorney's blessing. |
| 7:11:43 PM | President Kerry White | 76-2-208 continuation of non-conforming uses, I think we have yet to get an answer out of the County Attorney's Office because they don't believe that they can say that this zoning regulation is legal. I think otherwise they would just come out and say that it is legal. 76-2-208 is very clear to me that any lawful use of the land, at the time any zoning regulation is adopted by the County Commission, may |

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| | | be continued although such use does not conform to the provisions of such resolution. It is very clear and I asked Jecyn and we did vote unanimously. However, I voted in favor of this with clarification of whether this was legal upon adoption of it. I don't feel that the County Attorney's Office has provided that information and I can't support this. These sign companies have a lot of money and if there is a lawsuit it isn't just the property owners of the Gallatin Canyon but every resident of Gallatin County is going to pay for that through their taxes. I understand the support for this from the property owners but I can't support this even with the 10 year amortization. There is a 30 year lease on the property that affects the property owner and their ability to generate revenue from the lease and the costs involved for the sign company and their loss of revenue from the advertisers. I can't put my blessing on this. |
| 7:14:52 PM | Mike McKenna | If this zoning gets adopted and then there is a provision in the zoning regulations like the amortization period that is found to be illegal, does the rest of the zoning regulation hold? [correct] This is another reason to adopt it. I'd also recommend to those that are in favor of the zoning to think as good neighbors and determine what your property value will be if the sign goes away, and if it goes away maybe it is worth your while to work with the sign company to get it to go away sooner rather than later. |
| 7:15:48 PM | Don Seifert | I'm going to vote for it. The County Attorney's have reviewed the document and if they reviewed it and feel it isn't legal they wouldn't have approved it. It is citizen driven and is a good way to go. |
| 7:16:26 PM | | Vote: 6-2, motion passed; members Espelien and White opposed. |
| 7:17:03 PM | | This item will be before the Commissioners on November 10th. |
| 7:17:07 PM | President Kerry White | Other business. |
| 7:17:29 PM | C.B. Dormire | Update on the engineering phase II study. The item was pulled from the Commission's agenda on September 29th. There was a meeting and it is back on the agenda for their approval on October 20th. |
| 7:18:57 PM | Mike McKenna | Thanked Glenda for the email packets. Also suggested that he'd like the Planning Board to consider engaging the services of an attorney to have all of the subdivision regulations that were changed at the last legislative session gone over at least with the subdivision subcommittee. At that point we can bring that information back to the whole Planning Board. I'd like to be able to have some monies allocated for that particular project. [President White indicated that this would be placed on a future agenda for consideration.] |
| 7:19:57 PM | Susan Riggs | It would be helpful to have an estimate of the cost of this type of thing. |

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| 7:20:17 PM | President Kerry White | Noted the memo that Sean distributed, it is a result of the budget committee request regarding Planning Department's activities since 2007. |
| 7:20:48 PM | Sean O'Callaghan, County Planner | Asked for clarification if Mike's request was regarding the County Attorney's Office or an outside attorney. [outside] |
| 7:21:13 PM | | Meeting adjourned. |

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